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CITATIONS

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A NEW FORM FOR END-OF-LIFE PLANNING

By Jeffrey W. Loebel

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A NEW FORM FOR END-OF-LIFE PLANNING

By Jeffrey W. Loebel

INTRODUCTION

Patients are now able to make end-of-life medical choices with their doctors in advance of health crises. Effective January 1, 2009, California has joined fifteen other states in adopting a form for a comprehensive doctor's order for end-of-life choices, under Probate Code § 4780. Lawyers should consider conflicts between the new "POLST" orders (Physician Orders for Life-Sustaining Treatment) and advanced directives already in place.

In the early 1990s, doctors in Oregon developed a method of helping patients facing end-of-life medical decisions make thoughtful choices that medical providers will honor. This enables patients to preserve their autonomy at the end of life and, if preferred, avoid the trauma of resuscitation or other invasive procedures that often result in broken ribs and other injuries but have limited effectiveness.

Implementation of POLST in Ventura County is being led by Dr. James Hornstein, a local physician and ethics expert. He is organizing the training of health care professionals to honor the orders in Ventura County. Channel Islands POLST may be contacted at (805) 643-7246 or by email at channelislandspolst@gmail.com. The POLST form and more information can be found at www.finalchoices.org.

WHAT IS POLST?

A physician, in consultation with the patient, writes up an order on a brightly colored one-sheet POLST form (the website directs users to print the form on 65# Pulsar Pink paper). The form offers a range of medical treatment choices

that hospitals and emergency responders will be trained to identify and follow. The order is kept on a patient's bed in nursing homes or very close to people in hospice or in homecare settings. The form is signed by both the doctor and the patient, or the patient's surrogate.

Completion of a POLST form is indicated for patients with serious health conditions resulting in a significant risk of death within one year. Use of a POLST form is voluntary, but the order is to be honored by health care workers. The form may be used as the patient moves between care settings. A completed form provides clear and convincing evidence of the patient's desires on a range of treatment options and ensures that a patient's wishes are known when, as in the majority of the cases, no advanced directive exists.

The order set is easy to read and endowed with certain legal protections enabling everyone from the responding emergency worker to the emergency room doctor to honor a patient's wishes quickly and completely. The orders offer more utility and greater protection than advanced directives because of the brevity, clarity and uniformity of the form and the liability protections accompanying it. Additionally, and very importantly, the weight of the doctor's signature makes the order set valid and carries authority.

POLST V. ADVANCED DIRECTIVE

In hospitals, nothing happens without a doctor's order. Similarly, paramedics in the field are experienced in following medical protocol and doctors' orders. Because the form is an order signed by a doctor, the instructions are

given significant weight when any healthcare professional treats the patient. Emergency medical responders in Ventura County are being trained to identify and follow POLST orders when appropriate.

POLST forms are similar to Do Not Resuscitate (DNR) and Do Not Intubate (DNI) orders in that it is a doctor's order rather than a legal document prepared for non-exigent circumstances. POLST covers a wider variety of treatment options than do DNRs and DNIs, each of which address a single medical procedure. The POLST options for care include a range of treatment choices within the broad categories of: cardiopulmonary resuscitation (CPR), medical interventions, antibiotics, artificially administered nutrition.

The form is for exigent situations, and is not a replacement for Advanced Healthcare Directives, Durable Powers of Attorney for Healthcare or other lawyer crafted documents designed to allow clients to direct their care into the future or to appoint a surrogate.

Probate Code § 4781.4 provides that if an advanced directive conflicts with a POLST order then the document executed more recently in time controls. However, to be safe, including a term in the advanced directive that POLST controls in the event of a conflict would ensure that the form controlled.

If the client is a veteran, and becomes a patient of a Veterans Administration facility, the POLST form, known to the VA as a "state-authorized portable order" will be accepted by the VA. The VA then prepares new orders under VA guidelines to implement the veteran's wishes. Conversely VA practitioners must provide state-authorized portable orders to veterans who request them.

HOW DOES POLST HELP?

Advanced directives are often ineffective in emergency response situations because reading and analyzing the document consumes more time than there is available. When a patient is in need of CPR or other life saving care, there is not time to analyze an advanced directive before providing treatment. Patients are therefore treated; then, if available, advanced directives are read, surrogates are called, or personal doctors are notified to determine a patient's wishes.

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Unfortunately, this may not be the patient's desire. POLST forms are also helpful because only an estimated 20 to 30 percent of the population executes advanced directives, according to The Hastings Center. Very few people utilize advanced directive forms despite state and federal efforts to make completing advanced directives easier.

In many instances, patients are on life support or are progressing on their own, before anyone realizes what care they wanted, and what care they wished to refuse. The patient and the family then face the difficult choice of terminating care (pulling the plug) or in some cases, waiting for another serious medical event to occur.

Occasionally, saving someone who refuses care results in litigation, as in the *Neumann* case from Florida. A 92 year-old female nursing home patient had a valid advanced directive refusing resuscitation, but when she became ill, the ambulance was called, she was transferred to a hospital and given a variety of life-saving treatments. Her family subsequently informed the doctors at the hospital of the advanced directives. Eventually the life support treatments were terminated and Mrs. Neumann died a week later. The jury found the nursing home liable in the amount of \$150,000.

California POLST consumer information and forms are available on the Internet at the Final Choices website. Where appropriate, a practitioner might provide the reference booklet to a seriously ill client along with the suggestion that the client discuss POLST with their doctor. Because the choices to be made depend on the client's particular medical condition, medical expertise is helpful and usually necessary to help a client/patient knowingly complete the form.

POLST is a powerful tool to preserve a person's autonomy in making end-of-life choices and protecting health care providers when the orders are followed.

Jeffrey Loebel provides trustee services, legal project management, and practices business and sports franchise law. His office is in Ojai.

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